

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ELSA WAITHE,

Plaintiff,

-against-

THE CITY OF NEW YORK, a municipal entity, and
POLICE OFFICERS “JOHN DOES” 1-5,

Defendants.

**ANSWER ON BEHALF OF
DEFENDANT CITY OF NEW
YORK**

1:15-CV-06651

JURY TRIAL DEMANDED

----- X
Defendant the City of New York (“City”), by its attorney, Zachary W. Carter,
Corporation Counsel of the City of New York, for its Answer to the Complaint, respectfully
alleges, upon information and belief, as follows:

1. Denies the allegations set forth in paragraph “1” of the Complaint, except
admits that plaintiff purports to bring this action as stated therein and seeks relief as stated
therein.

2. Denies the allegations set forth in paragraph “2” of the Complaint.

3. Denies the allegations set forth in paragraph “3” of the Complaint, except
admits that plaintiff purports to invoke the Court’s jurisdiction as stated therein.

4. Denies the allegations set forth in paragraph “4” of the Complaint, except
admits that plaintiff purports to invoke the Court’s jurisdiction as stated therein.

5. Denies knowledge or information sufficient to form a belief as to the truth
of the allegations set forth in paragraph “5” of the Complaint.

6. Denies the allegations set forth in paragraph “6” of the Complaint, except
admits that plaintiff filed a Notice of Claim on or about July 1, 2015.

7. Denies the allegations set forth in paragraph “7” of the Complaint, except admits that plaintiff purports to base venue as stated therein.

8. Paragraph “8” of the Complaint sets forth no averment of fact and, therefore, requires no response.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “9” of the Complaint.

10. In response to the allegations set forth in paragraph “10” of the Complaint, admits only that the City is a municipal corporation existing under the laws of the State of New York.

11. In response to the allegations set forth in paragraph “11” of the Complaint, admits only that the City maintains a Police Department and respectfully refers the Court to the New York City Charter and Administrative Code for a recitation of the relationship between the City and the New York City Police Department.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “12” of the Complaint.

13. Paragraph “13” of the Complaint sets forth no averment of fact and, therefore, requires no response.

14. Paragraph “14” of the Complaint sets forth no averment of fact and, therefore, requires no response.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “15” of the Complaint; to the extent that paragraph “15” of the Complaint sets forth conclusions of law, rather than averments of fact, no response is required.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “16” of the Complaint; to the extent that paragraph “16” of the Complaint sets forth conclusions of law, rather than averments of fact, no response is required.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “17” of the Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “18” of the Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “19” of the Complaint.

20. Denies the allegations set forth in paragraph “20” of the Complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “21” of the Complaint.

22. Denies the allegations set forth in paragraph “22” of the Complaint.

23. Denies the allegations set forth in paragraph “23” of the Complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “24” of the Complaint.

25. Denies the allegations set forth in paragraph “25” of the Complaint and respectfully refers to the document(s) referenced therein for a recitation of its contents.

26. Denies the allegations set forth in paragraph “26” of the Complaint.

27. Denies the allegations set forth in paragraph “27” of the Complaint.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “28” of the Complaint.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “29” of the Complaint.

30. Denies the allegations set forth in paragraph “30” of the Complaint.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “31” of the Complaint.

32. Denies the allegations set forth in paragraph “32” of the Complaint, except denies knowledge or information sufficient to form a belief as to whether plaintiff had observed numerous other arrests.

33. Denies the allegations set forth in paragraph “33” of the Complaint.

34. Denies the allegations set forth in paragraph “34” of the Complaint.

35. Denies the allegations set forth in paragraph “35” of the Complaint.

36. Denies the allegations set forth in paragraph “36” of the Complaint.

37. Denies the allegations set forth in paragraph “37” of the Complaint.

38. Denies the allegations set forth in paragraph “38” of the Complaint.

39. Denies the allegations set forth in paragraph “39” of the Complaint.

40. Denies the allegations set forth in paragraph “40” of the Complaint.

41. Denies the allegations set forth in paragraph “41” of the Complaint.

42. In response to the allegations set forth in paragraph “42” of the Complaint, admits only that, upon information and belief, plaintiff was not arrested on or about April 14, 2015.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “43” of the Complaint.

44. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “44” of the Complaint.

45. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “45” of the Complaint.

46. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “46” of the Complaint.

47. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “47” of the Complaint.

48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “48” of the Complaint.

49. In response to the allegations set forth in paragraph “49” of the Complaint, admits only that plaintiff was interviewed during the course of a CCRB investigation.

50. In response to the allegations set forth in paragraph “50” of the Complaint, admits only that plaintiff was interviewed during the course of an IAB investigation.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “51” of the Complaint.

52. Denies the allegations set forth in paragraph “52” of the Complaint.

53. Denies the allegations set forth in paragraph “53” of the Complaint.

54. Denies the allegations set forth in paragraph “54” of the Complaint.

55. Denies the allegations set forth in paragraph “55” of the Complaint and respectfully refers to the document(s) referenced therein for a recitation of its contents.

56. Denies the allegations set forth in paragraph “56” of the Complaint.

57. Denies the allegations set forth in paragraph “57” of the Complaint.

58. Denies the allegations set forth in paragraph “58” of the Complaint.

59. Denies the allegations set forth in paragraph “59” of the Complaint and respectfully refers to the document(s) referenced therein for a recitation of its contents.

60. Denies the allegations set forth in paragraph “60” of the Complaint.

61. Denies the allegations set forth in paragraph “61” of the Complaint.

62. Denies the allegations set forth in paragraph “62” of the Complaint.

63. Denies the allegations set forth in paragraph “63” of the Complaint.

64. Denies the allegations set forth in paragraph “64” of the Complaint and respectfully refers to the document(s) referenced therein for a recitation of its contents.

65. Denies the allegations set forth in paragraph “65” of the Complaint and respectfully refers to the document(s) referenced therein for a recitation of its contents.

66. Denies the allegations set forth in paragraph “66” of the Complaint.

67. Denies the allegations set forth in paragraph “67” of the Complaint.

68. In response to the allegations set forth in paragraph “68” of the Complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “67” inclusive of its Answer as if fully set forth herein.

69. Paragraph “69” of the Complaint sets forth conclusions of law, rather than averments of fact, and therefore no response is required.

70. Denies the allegations set forth in paragraph “70” of the Complaint.

71. Paragraph “71” of the Complaint sets forth conclusions of law, rather than averments of fact, and therefore no response is required.

72. Paragraph “72” of the Complaint sets forth conclusions of law, rather than averments of fact, and therefore no response is required.

73. Paragraph “73” of the Complaint sets forth conclusions of law, rather than averments of fact, and therefore no response is required.

74. Denies the allegations set forth in paragraph “74” of the Complaint.

75. Denies the allegations set forth in paragraph “75” of the Complaint, except admits that plaintiff seeks relief as stated therein.

76. In response to the allegations set forth in paragraph “76” of the Complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “75” inclusive of its Answer as if fully set forth herein.

77. Denies the allegations set forth in paragraph “77” of the Complaint.

78. Denies the allegations set forth in paragraph “78” of the Complaint.

79. Denies the allegations set forth in paragraph “79” of the Complaint.

80. Denies the allegations set forth in paragraph “80” of the Complaint.

81. Denies the allegations set forth in paragraph “81” of the Complaint.

82. Denies the allegations set forth in paragraph “82” of the Complaint.

83. Denies the allegations set forth in paragraph “83” of the Complaint, except admits that plaintiff seeks relief as stated therein.

84. In response to the allegations set forth in paragraph “84” of the Complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “83” inclusive of its Answer as if fully set forth herein.

85. Denies the allegations set forth in paragraph “85” of the Complaint.

86. Denies the allegations set forth in paragraph “86” of the Complaint.

87. Denies the allegations set forth in paragraph “87” of the Complaint.

88. Denies the allegations set forth in paragraph “88” of the Complaint.

89. Denies the allegations set forth in paragraph “89” of the Complaint and respectfully refers to the document(s) referenced therein for a recitation of its contents.

90. Denies the allegations set forth in paragraph “90” of the Complaint.

91. Denies the allegations set forth in paragraph “91” of the Complaint.

92. Paragraph “92” of the Complaint sets forth conclusions of law, rather than averments of fact, and therefore no response is required.

93. Denies the allegations set forth in paragraph “93” of the Complaint.

94. Denies the allegations set forth in paragraph “94” of the Complaint, except admits that plaintiff seeks relief as stated therein.

95. In response to the allegations set forth in paragraph “95” of the Complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “94” inclusive of its Answer as if fully set forth herein.

96. Paragraph “96” of the Complaint sets forth conclusions of law, rather than averments of fact, and therefore no response is required.

97. Denies the allegations set forth in paragraph “97” of the Complaint.

98. Denies the allegations set forth in paragraph “98” of the Complaint.

99. Denies the allegations set forth in paragraph “99” of the Complaint.

100. Denies the allegations set forth in paragraph “100” of the Complaint, except admits that plaintiff seeks relief as stated therein.

101. In response to the allegations set forth in paragraph “101” of the Complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “100” inclusive of its Answer as if fully set forth herein.

102. Paragraph “102” of the Complaint sets forth conclusions of law, rather than averments of fact, and therefore no response is required.

103. Denies the allegations set forth in paragraph “103” of the Complaint.

104. Denies the allegations set forth in paragraph “104” of the Complaint.

105. Denies the allegations set forth in paragraph “105” of the Complaint.

106. Denies the allegations set forth in paragraph “106” of the Complaint.

107. Denies the allegations set forth in paragraph “107” of the Complaint.

108. Denies the allegations set forth in paragraph “108” of the Complaint, except admits that plaintiff seeks relief as stated therein.

109. In response to the allegations set forth in paragraph “109” of the Complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “108” inclusive of its Answer as if fully set forth herein.

110. Denies the allegations set forth in paragraph “110” of the Complaint.

111. Denies the allegations set forth in paragraph “111” of the Complaint.

112. Denies the allegations set forth in paragraph “112” of the Complaint.

113. Denies the allegations set forth in paragraph “113” of the Complaint.

114. Denies the allegations set forth in paragraph “114” of the Complaint.

115. Denies the allegations set forth in paragraph “115” of the Complaint.

116. Denies the allegations set forth in paragraph “116” of the Complaint.

117. Denies the allegations set forth in paragraph “117” of the Complaint.

118. Denies the allegations set forth in paragraph “118” of the Complaint and respectfully refers to the document(s) referenced therein for a recitation of its contents.

119. Denies the allegations set forth in paragraph “119” of the Complaint and respectfully refers to the document(s) referenced therein for a recitation of its contents.

120. Denies the allegations set forth in paragraph “120” of the Complaint and respectfully refers to the document(s) referenced therein for a recitation of its contents.

121. Denies the allegations set forth in paragraph “121” of the Complaint and respectfully refers to the document(s) referenced therein for a recitation of its contents.

122. Denies the allegations set forth in paragraph “122” of the Complaint and respectfully refers to the document(s) referenced therein for a recitation of its contents.

123. Denies the allegations set forth in paragraph “123” of the Complaint.

124. Denies the allegations set forth in paragraph “124” of the Complaint.

125. Denies the allegations set forth in paragraph “125” of the Complaint.

126. Denies the allegations set forth in paragraph “126” of the Complaint.

127. Denies the allegations set forth in paragraph “127” of the Complaint and its subparts, and respectfully refers to the document(s) referenced therein for a recitation of its contents.

128. Denies the allegations set forth in paragraph “128” of the Complaint.

129. Denies the allegations set forth in paragraph “129” of the Complaint and respectfully refers to the document(s) referenced therein for a recitation of its contents.

130. Denies the allegations set forth in paragraph “130” of the Complaint.

131. Denies the allegations set forth in paragraph “131” of the Complaint.

132. Denies the allegations set forth in paragraph “132” of the Complaint.

133. Denies the allegations set forth in paragraph “133” of the Complaint.

134. Denies the allegations set forth in paragraph “134” of the Complaint.

135. Denies the allegations set forth in paragraph “135” of the Complaint.

136. Denies the allegations set forth in paragraph “136” of the Complaint.

137. Denies the allegations set forth in paragraph “137” of the Complaint, except admits that plaintiff seeks relief as stated therein.

138. In response to the allegations set forth in paragraph “138” of the Complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “137” inclusive of its Answer as if fully set forth herein.

139. Denies the allegations set forth in paragraph “139” of the Complaint.

140. Denies the allegations set forth in paragraph “140” of the Complaint.

141. Denies the allegations set forth in paragraph “141” of the Complaint.

142. Denies the allegations set forth in paragraph “142” of the Complaint.

143. Denies the allegations set forth in paragraph “143” of the Complaint, except admits that plaintiff seeks relief as stated therein.

144. In response to the allegations set forth in paragraph “144” of the Complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “143” inclusive of its Answer as if fully set forth herein.

145. Denies the allegations set forth in paragraph “145” of the Complaint.

146. Denies the allegations set forth in paragraph “146” of the Complaint.

147. Denies the allegations set forth in paragraph “147” of the Complaint.

148. Denies the allegations set forth in paragraph “148” of the Complaint.

149. Denies the allegations set forth in paragraph “149” of the Complaint, except admits that plaintiff seeks relief as stated therein.

150. Denies the allegations set forth in paragraph “150” of the Complaint, except admits that plaintiff seeks relief as stated therein.

151. In response to the allegations set forth in paragraph “151” of the Complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “150” inclusive of its Answer as if fully set forth herein.

152. Paragraph “152” of the Complaint sets forth conclusions of law, rather than averments of fact, and therefore no response is required.

153. Denies the allegations set forth in paragraph “153” of the Complaint.

154. Denies the allegations set forth in paragraph “154” of the Complaint.

155. Denies the allegations set forth in paragraph “155” of the Complaint.

156. Denies the allegations set forth in paragraph “156” of the Complaint, except admits that plaintiff seeks relief as stated therein.

157. In response to the allegations set forth in paragraph “157” of the Complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “156” inclusive of its Answer as if fully set forth herein.

158. Paragraph “158” of the Complaint sets forth conclusions of law, rather than averments of fact, and therefore no response is required.

159. Denies the allegations set forth in paragraph “159” of the Complaint.

160. Denies the allegations set forth in paragraph “160” of the Complaint.

161. Denies the allegations set forth in paragraph “161” of the Complaint.

162. Denies the allegations set forth in paragraph “162” of the Complaint, except admits that plaintiff seeks relief as stated therein.

163. In response to the allegations set forth in paragraph “163” of the Complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “162” inclusive of its Answer as if fully set forth herein.

164. Denies the allegations set forth in paragraph “164” of the Complaint.

165. Denies the allegations set forth in paragraph “165” of the Complaint.

166. Denies the allegations set forth in paragraph “166” of the Complaint.

167. Denies the allegations set forth in paragraph “167” of the Complaint, except admits that plaintiff seeks relief as stated therein.

168. In response to the allegations set forth in paragraph “168” of the Complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “167” inclusive of its Answer as if fully set forth herein.

169. Denies the allegations set forth in paragraph “169” of the Complaint.

170. Denies the allegations set forth in paragraph “170” of the Complaint.

171. Denies the allegations set forth in paragraph “171” of the Complaint.

172. Denies the allegations set forth in paragraph “172” of the Complaint, except admits that plaintiff seeks relief as stated therein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

173. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

174. Any injury alleged to have been sustained resulted from plaintiff’s own culpable or negligent conduct or the culpable or negligent conduct of others and was not the proximate result of any act of defendant City.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

175. Defendant City has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any act of Congress providing the protection of civil rights.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

176. Plaintiff has failed to comply with New York General Municipal Law §§ 50(e), *et seq.*

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

177. At all times relevant to the acts alleged in the Complaint, the duties and functions of the municipal defendant's officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City is entitled to governmental immunity from liability.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

178. This action may be barred, in whole or in part, by the applicable statute of limitations period.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

179. Plaintiff failed to mitigate her alleged damages.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

180. Plaintiff's claims may be barred, in whole or in part, because plaintiff has failed to comply with all conditions precedent to suit.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

181. Punitive damages cannot be awarded against the City of New York.

WHEREFORE, defendant requests judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
February 29, 2016

ZACHARY W. CARTER
Corporation Counsel of the City of New York
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By: /s/ Kavin Thadani
Kavin Thadani
Senior Counsel
Special Federal Litigation Division

BY ECF
Samuel Cohen, Esq.
Attorney for Plaintiff

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**ANSWER ON BEHALF OF DEFENDANT
CITY OF NEW YORK**

ZACHARY W. CARTER

*Corporation Counsel of the City of
New York*

Attorney for Defendant City

100 Church Street

New York, New York 10007

Of Counsel: Kavin Thadani

Tel: (212) 356-2351

Due and timely service is hereby admitted.

New York, N.Y., 2016

..... Esq.

Attorney for